

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-5130

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM HARRIS TAFT, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Chief District Judge. (CR-03-208)

Submitted: June 15, 2005

Decided: July 26, 2005

Before WILKINSON, GREGORY, and SHEDD, Circuit Judges.

Remanded by unpublished per curiam opinion.

Alton L. Gwaltney, III, MOORE & VAN ALLEN, Charlotte, North Carolina, for Appellant. Amy Elizabeth Ray, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina; Michael E. Savage, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

William Harris Taft, Jr., seeks to appeal his conviction and sentence. In criminal cases, the defendant must file the notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, upon a showing of excusable neglect or good cause, the district court may grant an extension of up to thirty days to file a notice of appeal. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered judgment on November 10, 2004; the ten-day appeal period expired on November 24, 2004. Taft filed the notice of appeal after the ten-day period expired but within the thirty-day excusable neglect period. Because the notice of appeal was filed within the excusable neglect period, we remand the case to the district court for the court to determine whether Taft has shown excusable neglect or good cause warranting an extension of the ten-day appeal period.* The record, as supplemented, will then be returned to this court for further consideration. We defer action on the joint motion to remand for resentencing.

REMANDED

*Taft filed a motion for extension of time to file a notice of appeal on December 15, 2004, which he asserts in his brief on appeal that the district court granted. Our review of the district court's docket, however, reveals no entry for such an order.